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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,179	04/09/2004	Kuo-Chin Chang		1777

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EXAMINER
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ALLEN, WILLIAM J

ART UNIT	PAPER NUMBER
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3625

NOTIFICATION DATE	DELIVERY MODE
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07/09/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

<b>Office Action Summary</b>	<b>Application No.</b> 10/822,179	<b>Applicant(s)</b> CHANG ET AL.	
	<b>Examiner</b> WILLIAM J. ALLEN	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/9/04; 10/24/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Prosecution History Summary***

Claims 1-12 are pending.

Claims 1-7 are withdrawn as set forth below.

Claims 8-12 are rejected as set forth below.

***Election/Restrictions***

Applicant's election without traverse of group II, claims 8-12 in the reply filed on 5/8/2008 is acknowledged.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**1. Claims 8-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Based on Supreme Court precedent, and recent Federal Circuit decisions, a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876). In order to qualify as a statutory process the claim should positively recite the other statutory classes to which it is tied (e.g. by identifying the apparatus that accomplishes the method or positively reciting the subject matter being transformed). The process steps in claims 8-12 are not tied to a statutory class nor do they execute a transformation and are thereby considered non-statutory.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 2. Claims 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Regarding claim 9**, claim 9 recites “determining whether it is necessary to negotiate...” but fails to provide any incite on why or when it would be necessary to perform negotiations. The claim is thereby indefinite because the scope of what does or does not constitute a necessary determination is vague.

**Regarding claim 10**, claim 10 recites “sending a notice to each successful supplier...”, however, it is not clear as to what may be considered successful. For example, a supplier may be informed that their bid was accepted and thus, they were successful. Conversely, a supplier may only be successful if the bid is a winning bid. The claim is therefor indefinite as to what constitutes “success”.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3. Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kellam et al. (US 20030130927) in view of Schrantz (US 20030144922) in further view of Westbrook et al. (US 20020052802).**

**Regarding claim 8,** Kellam teaches a product purchasing method including:

*setting basic information on to-be-purchased products* (see at least: 0025 (note: defining a product and preparing a specification for the product));

*setting a base price for each to-be-purchased machine* (see at least: 0035 (note: establishing a maximum acceptable price)

*compiling a purchasing scheme based on the base price* (0033, 0035 (note: the combination of defined product information (*basic information*), subsets, and parameters (the parameters including a maximum (*base*) price) constitutes a *purchasing scheme*. The scheme is thereby based at least in part on the maximum price);

*opening bidding documents to suppliers* (see at least: 0026-0027, Fig. 1A-1B);

*receiving suppliers' responses to the bidding documents* (see at least: 0026-0027, Fig. 1A-1B (note: bids are submitted in response to providing the electronic auction);

*determining whether a quotation of any supplier exceeds the base price* (see at least: 0035;  
*excluding a supplier if the quotation of the supplier exceeds the base price* (see at least: 0035; *and*  
*selecting one or more successful suppliers from all eligible suppliers* (see at least: 0028, Fig. 1C).

Though Kellam teaches all of the above including setting a base price (0035), Kellam does not explicitly teach

*receiving historical transaction records from a financial management system;*  
*receiving current prices of the to-be-purchased products;*  
*setting a base price for each to-be-purchased machine based on the historical transaction records and the current prices.*

In the same field of endeavor, Schrantz teaches a system for person to person commerce that allows sellers to list items on a transaction site via a web interface. More specifically, when preparing to list an item, the system (*financial management system*) displays both historic and current price information to assist the user in determining the listing price (i.e. *base price*) (see at least: 0056). In other words, Schrantz effectively teaches analogous functionality to setting a base price for a to be purchased product based on historic and current price data. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the

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invention of Kellam to have included the noted features because the incorporation of such features is recognized as part of the ordinary capabilities of one skilled in the art.

Though Kellam teaches all of the above including determining whether a quote exceeds a base price as well as using additional criteria to further distinguish the bidders (see at least: 0007, 0012, 0028, and 0031), Kellam does not clearly disclose *auditing information on a supplier in order to determine whether the supplier is eligible* (i.e. using additional criteria to limit eligibility).

In the same field of endeavor, Westbrook teaches a system and method for facilitating wood product transactions including obtaining a request for transaction partners and generation of a list of available sellers (see at least: abstract). More specifically, Westbrook teaches a three-tiered approach to identifying eligible sellers including *auditing information on a supplier in order to determine whether the supplier is eligible* (see at least: 0012, 0053, 0065, 0067, 0084). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Kellam to have included the noted features of Westbrook because the incorporation of such features is no more than the combination of known prior art elements according to their established function yielding predictable results.

Lastly, the Examiner notes that Kellam teaches the noted aspects with respect to general products sought to be purchased by a user. There is no specific reference to purchasing "machines" in Kellam, however, these differences amount only to the specific type of product being sold and are not functionally related to the substrate of the invention. Thus, this is



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descriptive material and does not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use the above method to sell "machines" because the specific type of product being sold does not functionally relate to the substrate of the invention and merely labeling the type of product differently from that in the prior art would have been obvious. See *In re Gulack* cited above.

**Regarding claims 9-12**, Kellam in view of Schrantz in view of Westbrook teaches:

(9) *determining whether it is necessary to negotiate with any eligible supplier; and negotiating with an eligible supplier if it is necessary to negotiate with the eligible supplier* (see at least: 0035). The Examiner notes that if a bidder meets the price criteria, it is necessary to negotiate with that bidder.

(10) *sending a notice to each successful supplier to inform the supplier of success* (see at least: 0035, Fig. 1C). Note: a contract is sent to the winning (*successful*) bidder.

(11) *drawing up one or more legal contracts* (see at least: 0035, Fig. 1C).

(12) *step of sending said legal contracts to said successful suppliers and requesting said successful suppliers to sign said legal contracts* (see at least: 0035, Fig. 1C). The Examiner notes that in order to be executed the contract must be signed by the parties involved.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- US 5842178 A discloses a computerized quotation system and method
- US 20050038713 A1 discloses a pooled transaction system
- US 20050071249 A1 discloses an e-commerce re-pricing system
- US 20080154763 A1 discloses a method and system for dynamically controlling overtime in electronic auctions
- US 6199050 B1 discloses a method and system for bidding in electronic auctions using flexible bidder-determined line-item guidelines
- US 20040006530 A1 discloses a system and method for automated lotting
- US 5732400 A discloses a system and method for a risk-based purchase of goods

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM J. ALLEN whose telephone number is (571)272-1443. The examiner can normally be reached on 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff A. Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Smith/  
Supervisory Patent Examiner, Art Unit  
3625

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